

# **Wisconsin Children's Court Initiative (CCI) Summary Report**

**January 2008**

**Director of State Courts Office  
Children's Court Improvement Program  
110 E. Main St., Suite 410  
Madison, WI 53703  
(608) 267-1958 or (608) 266-1557**

	PAGE
<b>A. INTRODUCTION.....</b>	<b>2</b>
1. Children’s Court Initiative Overview.....	2
2. Performance Measures .....	2
3. Methodology .....	3
4. Summary Report .....	3
<b>B. SAFETY.....</b>	<b>3</b>
1. “Contrary to the Welfare” and “Reasonable Efforts to Prevent Removal” Findings.....	3
2. Best Practice Examples .....	4
<b>C. PERMANENCY.....</b>	<b>4</b>
1. Evaluations of the Permanency Plan.....	5
2. Best Practice Examples .....	6
<b>D. DUE PROCESS.....</b>	<b>6</b>
1. Notice of Hearings. ....	6
2. Changes of Placement. ....	8
3. Opportunity to be Heard in Court .....	8
4. Representation for Parents and Children.....	9
5. Number of Judicial Officers.....	12
<b>E. TIMELINESS .....</b>	<b>13</b>
1. Court Orders.....	13
2. Timeliness of Court Proceedings .....	14
3. Court Reports .....	16
<b>F. INDIAN CHILD WELFARE ACT .....</b>	<b>16</b>
<b>G. OTHER FINDINGS.....</b>	<b>17</b>
1. Case Management and Other Issues.....	17
2. Agency Related Issues .....	18

## **APPENDICES**

Appendix A: CCI Performance Measures

Appendix B: Wisconsin Map Highlighting Counties Reviewed

Appendix C: CCI Court File Review and Court Observation Instruments

Appendix D: Wisconsin Supreme Court Rule, Chapter 35

## **A. INTRODUCTION**

---

### **1. CHILDREN’S COURT INITIATIVE (CCI) OVERVIEW**

The Children’s Court Initiative (CCI) is a comprehensive, ongoing collaborative project created by the Director of State Courts Office, Children’s Court Improvement Program designed to strengthen court processing in Chapter 48 cases. The mission of CCI is to assist the court system and those providing services to it in achieving safety, permanency, due process, and timeliness outcomes for children and families in child welfare proceedings. CCI works in partnership with the Division of Children and Family Services and its Continuous Quality Improvement (CQI) program. The goal of CQI is to improve child welfare practice. CQI staff review agency child welfare case files and conduct in-depth interviews about the specific cases they are reviewing. When schedules permit, CCI and CQI staffs travel in unison to conduct simultaneous reviews of the same counties to minimize disruption and duplication.

CCI is an internal review designed to determine whether counties are meeting minimum practice standards and to identify best practices and any areas that need improvement. The CCI Advisory Committee has established safety, permanency, due process, and timeliness performance measures in child in need of protection or services (CHIPS) and termination of parental rights (TPR) cases. Case processing as it relates to the performance measures is assessed and tracked through on-site county reviews. The preliminary observations from each on-site review are shared orally at an exit conference at the conclusion of the review. The formal findings are presented in the form of a written report approximately three months after the on-site review. The on-site review and report do not address all aspects of the child welfare system as it relates to the courts, but cover a discrete number of issues as described by the performance measures. Approximately fifteen counties are reviewed each year.

### **2. PERFORMANCE MEASURES<sup>1</sup>**

With the goal of improving outcomes for children and families, combined with attempting to prevent the loss of future federal funding, the CCI Advisory Committee established safety, permanency, due process, and timeliness performance measures based on: provisions of state and federal law, such as the Adoption and Safe Families Act (ASFA) and Indian Child Welfare Act (ICWA); findings from the federal Child and Family Services Review in Wisconsin; federal Title IV-E funding requirements; and best practice principles outlined in the “Resource Guidelines: Improving Court Practice in Child Abuse & Neglect Cases”<sup>2</sup>, and “Building a Better Court: Measuring and Improving Court Performance and Judicial Workload in Child Abuse and Neglect Cases” Guide and Toolkit<sup>3</sup>.

The performance measures can be summarized as follows:

*Safety:* Children are safe from abuse and neglect, and maintained in their own home whenever possible.

*Permanency:* Children have permanence and stability in their living situation.

*Due Process:* Proceedings are conducted in a fair, thorough manner with effective judicial oversight.

*Timeliness:* Children’s permanence and stability are met through timely proceedings and decision-making.

---

<sup>1</sup> See Appendix A: CCI Performance Measures.

<sup>2</sup> Published by the National Council of Juvenile and Family Court Judges (NCJFCJ).

<sup>3</sup> Published by the American Bar Association-Center on Children and the Law, National Center for State Courts, and NCJFCJ.

### 3. METHODOLOGY

Three data collection methods were utilized during the on-site reviews to evaluate the performance measures mentioned above: court file review, court observation, and focus groups.

**Court File Review.** The CHIPS and TPR case samples for the court file review are randomly selected cases filed by the District Attorney's Office, Corporation Counsel's Office, or contract attorney for the agency. The date range for the samples is chosen to reflect current practice while also capturing cases with post-dispositional activity (e.g., changes of placement and permanency plan hearings).

**Court Observation.** The hearings for the court observation are selected randomly with the requirement that they be hearings for publicly filed CHIPS or TPR cases. However, if there are a limited number of hearings held for publicly filed CHIPS and TPR cases during the on-site review, hearings for juvenile in need of protection or services (JIPS) or delinquency cases may also be observed. If there is a sibling group, information on only one of the children is captured.

**Focus Groups.** The standard CCI focus groups are with: judges, circuit court commissioners, district attorneys/corporation counsels, guardians ad litem, defense attorneys, court-appointed special advocates, caseworkers, agency supervisors, foster parents, foster children, and tribal representatives. In addition, information is obtained from the juvenile clerks through a pre-visit worksheet and informal discussions.

### 4. SUMMARY REPORT

This Summary Report compiles the data, findings, and best practices<sup>4</sup> from the CCI on-site reviews conducted in 30 counties from June 2005 to August 2007: La Crosse, Pierce, Washington, Rock, Waukesha, Iowa, St. Croix, Dane, Sheboygan, Washburn, Burnett, Adams, Waupaca, Green, Barron, Marquette, Columbia, Milwaukee, Racine, Crawford, Jefferson, Shawano, Trempealeau, Clark, Brown, Manitowoc, Jackson, Rusk, Pepin, and Buffalo.<sup>5</sup> A total of 834 CHIPS cases and 343 TPR cases were reviewed; 260 hearings were observed; and over 300 focus groups were conducted during the on-site reviews.

## B. SAFETY

---

### 1. "CONTRARY TO THE WELFARE" AND "REASONABLE EFFORTS TO PREVENT REMOVAL" FINDINGS

When Congress established the "contrary to the welfare" and "reasonable efforts to prevent removal" findings requirement through the Adoption and Safe Families Act and Titles IV-B and IV-E of the Social Security Act, it was their intent to keep children safely in their own home whenever possible and ensure that children and parents are receiving services needed to preserve or reunify the family. In addition, Congress provides federal funding to states for eligible children placed in out-of-home care. However, if judicial findings are not made concerning "contrary to the welfare" and "reasonable efforts to prevent removal", the child is ineligible for this funding.

The initial order removing the child from the home must include the following findings: continued placement of the child in his or her home is contrary to the welfare of the child, and whether the agency has made reasonable efforts to prevent removal of the child from the home.<sup>6</sup>

---

<sup>4</sup> The counties listed in this report for the best practice examples are not necessarily the only counties of the counties that were reviewed utilizing these practices, but were the ones identified during the CCI on-site reviews.

<sup>5</sup> See Appendix B: Wisconsin Map Highlighting Counties Reviewed.

<sup>6</sup> See Wis. Stats. §§48.21(5), 48.355(2)(b)2., and 48.357(2v); Adoption and Safe Families Act (P.L. 105-89); and 45 C.F.R. 1356.21.

The child was removed from the home in 599 of the CHIPS cases reviewed.

- 97% of the written orders authorizing removal included the “contrary to the welfare” finding.
- 97% of the written orders authorizing removal included the “reasonable efforts to prevent removal” finding.

In a few counties, the temporary physical custody order and CHIPS dispositional order contained a general statement when addressing the “contrary to the welfare” finding.<sup>7</sup> It is unclear whether future federal Title IV-E reviews will accept general statements such as these as meeting the requirement that the finding be detailed and child-specific. Therefore, best practice is to include information about the circumstances related to that individual child’s out-of-home care episode.

An attachment to the order was occasionally used to make the “contrary to the welfare”, “reasonable efforts to prevent removal” or “reasonable efforts to achieve the goal of the permanency plan” finding. Using an attachment is not the preferred method of making these findings. However, if an attachment is used, the attachment needs to be referenced on the written order for each applicable finding and directly attached to the written order.

The court almost always addressed the “contrary to the welfare” and “reasonable efforts to prevent removal” findings orally on the record in some manner. However, the level of detail and whether the specific phrase “contrary to the welfare” or “reasonable efforts to prevent removal” was stated varied by judicial officer.

It was not uncommon to have a discrepancy between what was stated on the record and what was memorialized on the court order. Specifically, the court would make a detailed finding orally on the record but it was inadvertently omitted on the written court order, or vice versa.

## **2. BEST PRACTICE EXAMPLES**

- Creating a local form that contains information about the “contrary to the welfare”, “reasonable efforts to prevent removal” and/or “reasonable efforts to achieve the goal of the permanency plan” findings, which the caseworker completes and provides to the court prior to applicable hearings. [Shawano, Crawford, Washington, and Sheboygan Counties]
- Presenting detailed testimony concerning the “contrary to the welfare”, “reasonable efforts to prevent removal” and/or “reasonable efforts to achieve the goal of the permanency plan” findings at applicable hearings. [Green County]

## **C. PERMANENCY**

---

In order to promote stability and expedite permanency for abused and neglected children placed out of the home, state and federal laws have been created giving the court oversight responsibility in the child’s permanency planning. These laws require timely and thorough reviews of the permanency plan and the agency to make reasonable efforts to achieve the goal of the child’s permanency plan. Failure to comply with these laws may result in a possible delay in reaching permanency as well as loss of federal Title IV-E funding.

---

<sup>7</sup> Examples of these general statements include: “parent neglecting, refusing or unable to provide adequate supervision and care”, “the child is at risk of abuse/neglect in the parental home” and “the current placement does not provide the requisite level of supervision/control necessary to protect/safeguard the child and/or the community.”

## **1. EVALUATIONS OF THE PERMANENCY PLAN**

The permanency plan for children placed out of the home must be reviewed by the court or administrative review panel no later than 6 months after the child was removed from the home. If the permanency plan is reviewed by an administrative review panel, a review summary must be filed with the court within 30 days of the review. The permanency plan has to be reviewed again no later than 12 months after the child was removed from the home by the court through a permanency plan hearing.<sup>8</sup>

### **a. 6-Month Permanency Plan Review**

The child was placed out of the home 6 months or longer in 355 of the CHIPS cases reviewed. Permanency plan reviews were heard by an administrative review panel, versus the court, in 23 of the 30 counties.<sup>9</sup> An administrative review occurred in 158 cases.

- 79% of the cases had the permanency plan reviewed no later than 6 months after removal.
- 73% of the review summaries were filed within the statutorily required 30 days after the administrative review.

### **b. 12-Month Permanency Plan Hearing**

The child was placed out of the home 12 months or longer in 136 of the CHIPS cases reviewed.

- 87% of the cases had a permanency plan hearing conducted no later than 12 months after removal.<sup>10</sup>

In a few counties the permanency plan hearing and CHIPS dispositional hearing were held simultaneously, but only the dispositional hearing notice and order requirements were adhered to. Combining the hearings is permissible, provided the parties are notified that a permanency plan hearing is going to be held as required by §48.38(5m), Stats., and a Permanency Plan Hearing Order (Form JD-1791), which contains the findings required under §§48.38(5)(c) and (5m)(e), Stats., is completed in addition to a dispositional order.

### **c. “Reasonable Efforts to Achieve the Goal of the Permanency Plan” Finding**

The permanency plan hearing order must include a determination as to whether reasonable efforts were made by the agency to achieve the goal of the permanency plan.<sup>11</sup>

A permanency plan hearing was held in 239 of the CHIPS cases reviewed.

- 95% of the cases that had a permanency plan hearing, the most recent permanency plan hearing order included the “reasonable efforts to achieve the goal of the permanency plan” finding.

The court almost always addressed the “reasonable efforts to achieve the goal of the permanency plan” finding orally on the record in some manner. However, the level of detail and whether the specific phrase “reasonable efforts to achieve the goal of the permanency plan” was stated varied by judicial officer.

---

<sup>8</sup> See Wis. Stats. §§48.38(5) & (5m), and 42 U.S.C. 675(5)(C).

<sup>9</sup> Pierce, Washington, Rock, Waukesha, Iowa, St. Croix, Dane, Sheboygan, Washburn, Burnett, Adams, Waupaca, Green, Barron, Marquette, Columbia, Jefferson, Clark, Brown, Manitowoc, Rusk, Pepin, and Buffalo Counties.

<sup>10</sup> In several of the cases where a permanency plan hearing was not conducted within 12 months after removal, the hearing was less than 30 days late.

<sup>11</sup> See Wis. Stats. §§48.38(5)(c)7. & (5m)(e), and 45 C.F.R. 1356.21(b)(2).

## 2. BEST PRACTICE EXAMPLES

- Creating the Questionnaire for Permanency Plan Review form, which is sent to individuals involved in the case, such as foster parents, to provide written information and input at the permanency plan review hearing. [Milwaukee County]
- Sending a form to the parties prior to the permanency plan hearing that contains information about the purpose of and issues to be discussed at the hearing. [Marquette and Racine Counties]

## D. DUE PROCESS

---

There should be judicial and other procedures through which children and all other interested parties are assured fair hearings and their constitutional and other legal rights are recognized and enforced.<sup>12</sup>

### 1. NOTICE OF HEARINGS<sup>13</sup>

Notice of hearings is required to be provided to parents in CHIPS and TPR proceedings. When applicable, notice of hearings in CHIPS and TPR proceedings must also be provided to non-parental caregivers and the tribe.<sup>14</sup>

Notice of hearings in CHIPS and TPR cases was routinely provided to parents and documented in the court file.

The court files lacked documentation that notice was provided to the caregiver in a significant number of cases. However in most of the counties, focus groups statements and attendance of caregivers at the hearings indicated that notice was actually being provided to caregivers even if there was no formal record of the notice.

When a case was identified as being subject to the Indian Child Welfare Act (ICWA), notice of hearings was routinely provided to the tribe and documented in the court file. However, it was not possible to determine whether the child was subject to ICWA, and therefore governed by additional notice requirements, in a number of the CHIPS cases reviewed (see Section F below).

Although it was not formally measured as part of the CCI review, the court file review revealed that children 12 years of age or older were not regularly provided with a copy of the petition, given notice of hearings or summoned in CHIPS and TPR cases as required by statute in a few of the counties that were reviewed.<sup>15</sup>

---

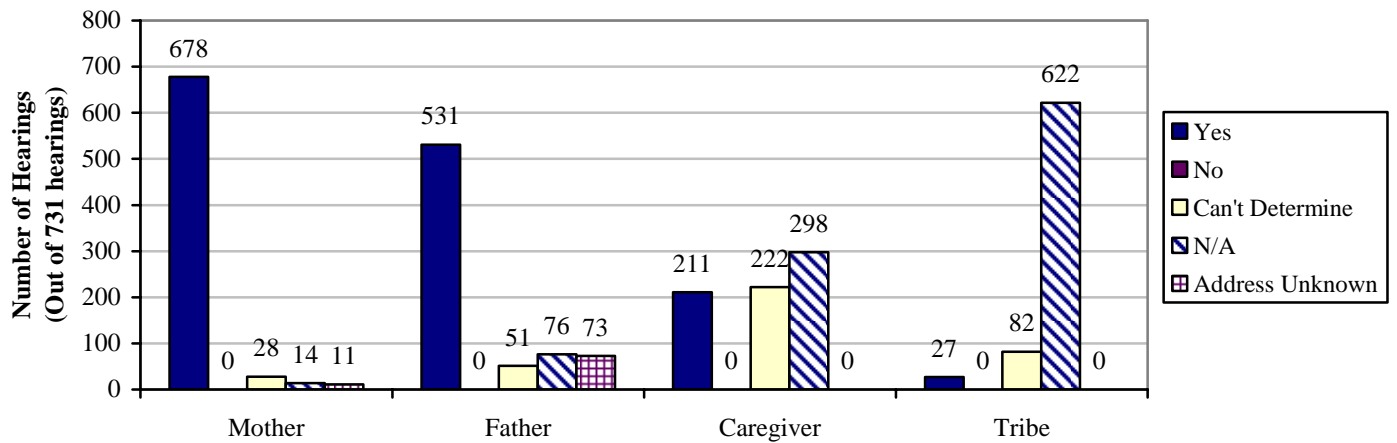
<sup>12</sup> See Wis. Stats. §48.01(1)(ad).

<sup>13</sup> For purposes of the CCI review, notice can be given in writing, orally, or through publication.

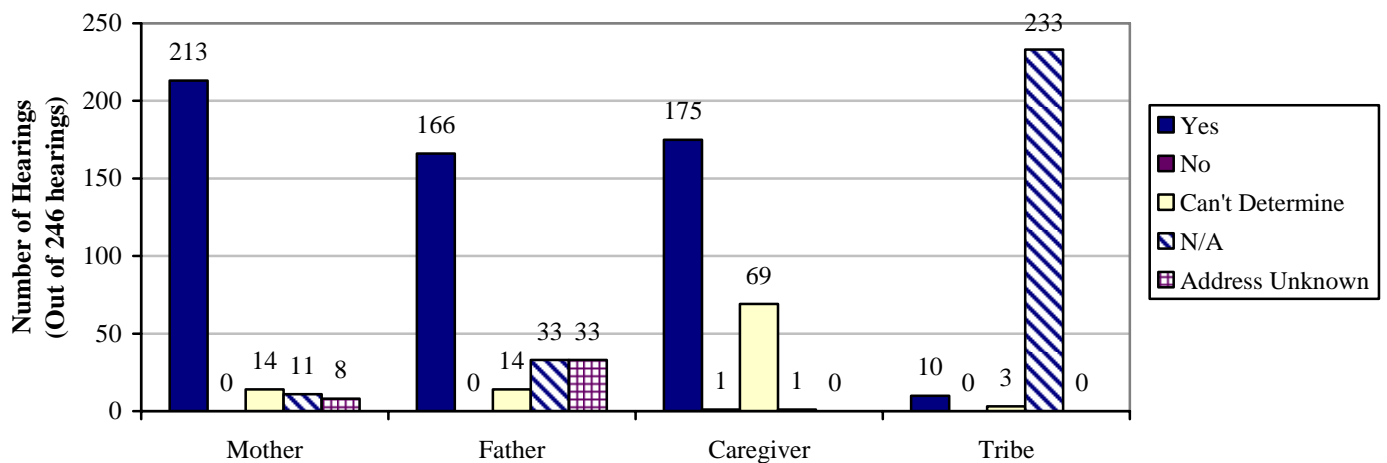
<sup>14</sup> See Wis. Stats. §§48.27(3)(a)1., 48.42(2) & 48.42(2g), and Indian Child Welfare Act, 25 U.S.C. 1912(a).

<sup>15</sup> See Wis. Stats. §§48.255(4), 48.27(3)(a)1., and 48.42(2)(e).

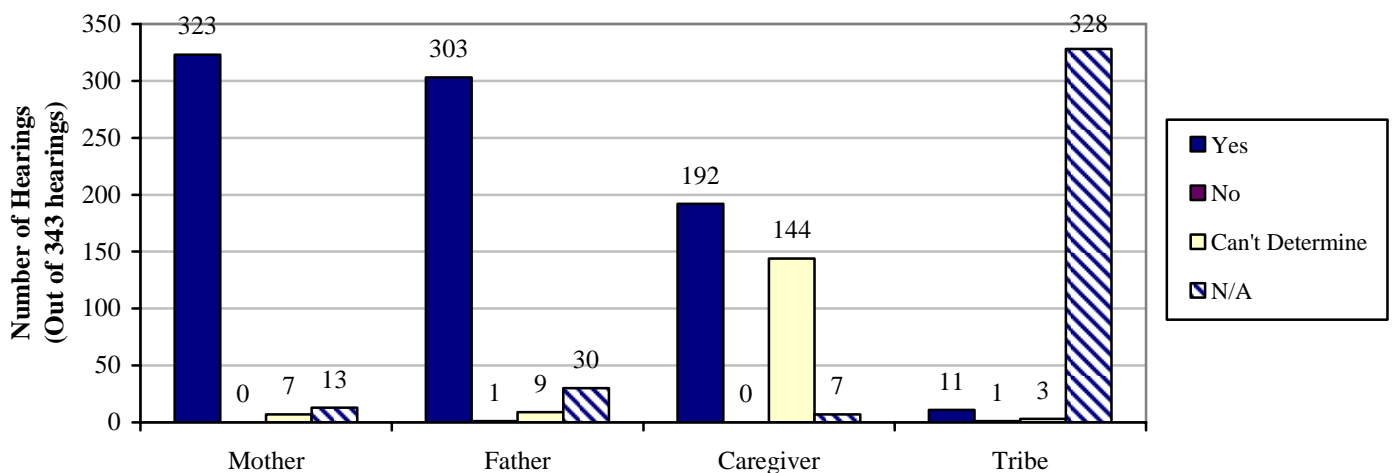
**Figure 1: Notice Given for the CHIPS Dispositional Hearing<sup>16</sup>**



**Figure 2: Notice Given for the Most Recent Permanency Plan Hearing**

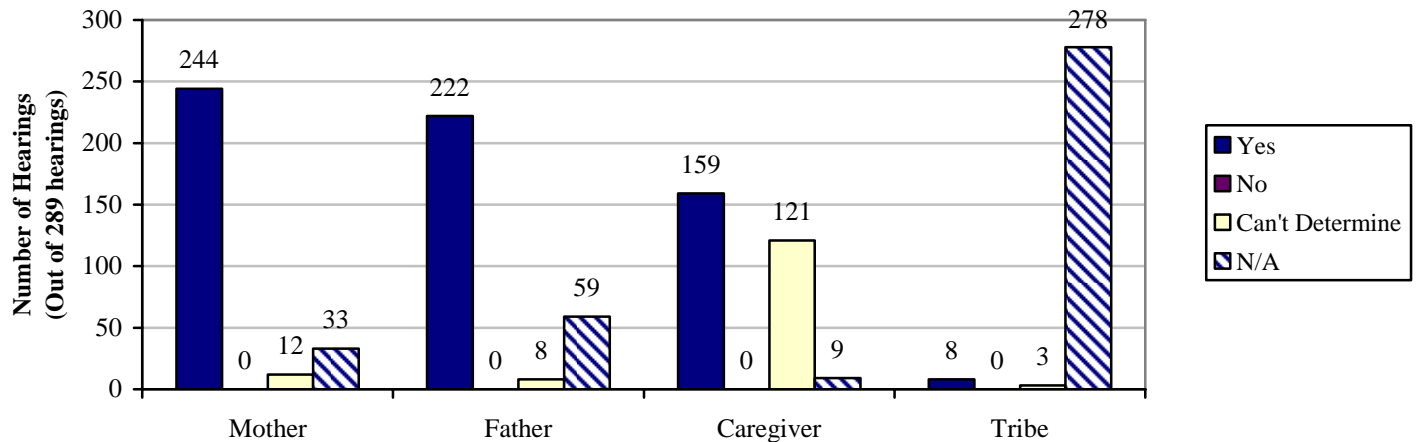


**Figure 3: Notice Given for the TPR Hearing on Petition**



<sup>16</sup> In Figures 1-4, "Can't Determine" represents those instances where the court file lacked documentation that notice of the hearing was provided to the mother, father, caregiver, or tribe.

**Figure 4: Notice Given for the TPR Dispositional Hearing**



### a. Best Practice Examples

- Creating a form that the caseworker completes and provides to the court with the most current or updated addresses for the parties in the case. [Dane and Milwaukee Counties]

## 2. CHANGES OF PLACEMENT

A child's placement shall not be changed until either a hearing is held or 10 days after the notice of change of placement is sent to the court and the parties (except in emergency situations).<sup>17</sup>

In the CHIPS cases reviewed, a change of placement occurred after disposition on 216 occasions.<sup>18</sup>

- 94% of the changes of placement occurred with notice or a hearing to the court.
- 54% of the changes of placement had an associated order for change of placement.
- 38% of the changes of placement complied with statutory requirements by taking place after a hearing was held or 10 days after the notice of change of placement was sent to the court.<sup>19</sup>

## 3. OPPORTUNITY TO BE HEARD IN COURT

### a. Parents

Court observation and focus group statements indicated that judicial officers routinely gave parents an opportunity to participate in court and solicited information directly from them or their attorneys, although the specific level of parent participation was dependent upon the judicial officer hearing the case.

<sup>17</sup> See Wis. Stats. §§48.357(1)-(2m).

<sup>18</sup> This data does not include La Crosse County because the performance measures related to changes of placement were added after the review in La Crosse County.

<sup>19</sup> See Wis. Stats. §48.357(1)(am)2. This data does not include 13 counties because this performance measure was added after reviews were conducted in those counties.

## **b. Caregivers**

Wisconsin statutes require that non-parental caregivers be given an opportunity to be heard at court hearings in CHIPS and TPR proceedings by permitting them to make a written or oral statement.<sup>20</sup> Moreover, it is beneficial to the court to hear from caregivers since they usually have a substantial amount of pertinent information about the child. In addition, the findings from the Child and Family Services Review (CFSR) conducted in Wisconsin in 2003 indicated that this is an area that needs improvement.

In the majority of the counties, caregivers were routinely given an opportunity to be heard in court. However, in a number of the counties the method for providing input to the court was unclear to some foster parents, particularly newer foster parents. Furthermore, the level of caregiver participation and whether they were asked directly to make a statement varied depending on the judicial officer.

## **c. Best Practice Examples**

- Using a plea questionnaire, waiver of attorney, appellate rights notification, or Notice of Rights, Obligations and Possible Disclosure form in CHIPS and TPR cases. [Jefferson, Crawford, Brown, Shawano, Columbia, Adams, St. Croix, Barron, Dane, Pierce, Washington, Waukesha, Sheboygan, and La Crosse Counties]
- Holding frequent review hearings in the CHIPS case after disposition, which holds the parents accountable and provides an update to the court and parties. [La Crosse, Trempealeau, and Crawford Counties]

## **4. REPRESENTATION FOR PARENTS AND CHILDREN**

The “Resource Guidelines” and “Building a Better Court” publications promote timely appointment of counsel for all parties involved in CHIPS and TPR proceedings to ensure that parents’ due process rights are protected and the child’s best interests are represented at all stages of the proceeding.

### **a. Procedure for Appointing Attorneys for Parents**

The 30 counties reviewed employed various procedures for appointing attorneys for parents in CHIPS cases:

- In 10 counties, the court required that parents requesting attorneys complete a written form regarding their ability to pay for an attorney, typically the Petition for Appointment of Counsel and the Affidavit of Indigency form.
- In one county, an Indigency Hearing was held to gather information regarding the parent’s financial circumstances.
- In 17 counties, the court made a determination on a case-by-case basis after considering the parent’s financial circumstances and other relevant factors, such as the parent’s ability to understand the proceedings and act on their own behalf.
- In two counties, the court did not have a procedure for appointing attorneys for parents in CHIPS cases, and at its discretion rarely appointed attorneys for parents in CHIPS cases.

---

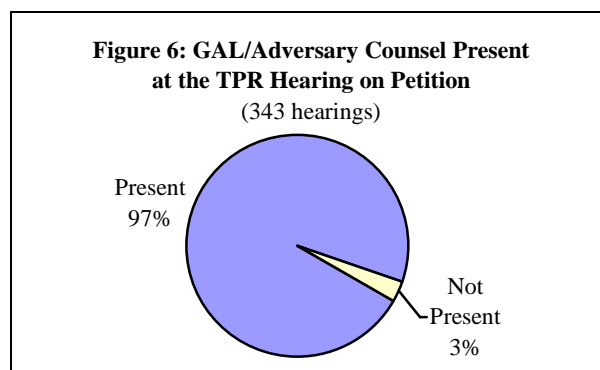
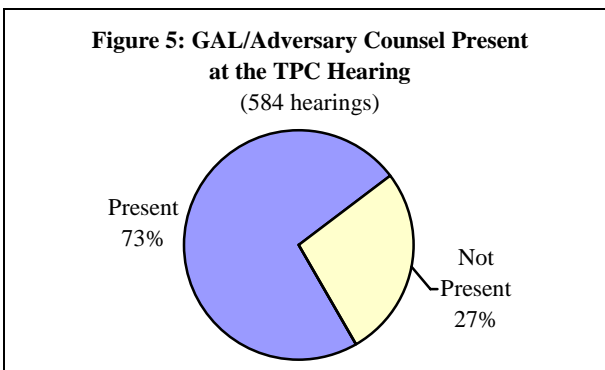
<sup>20</sup> See Wis. Stats. §§48.27(3)(a)1m. & 48.42(2g)(am).

## b. Procedure for Monitoring Guardian ad Litem Training

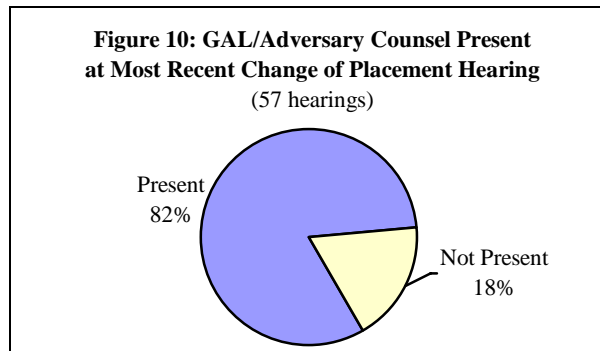
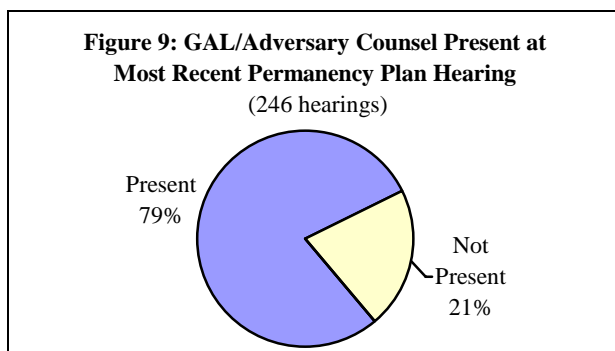
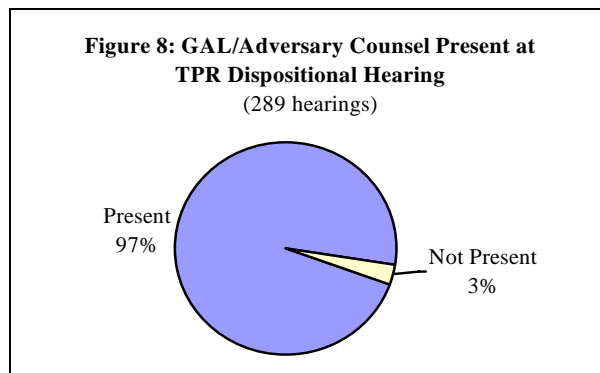
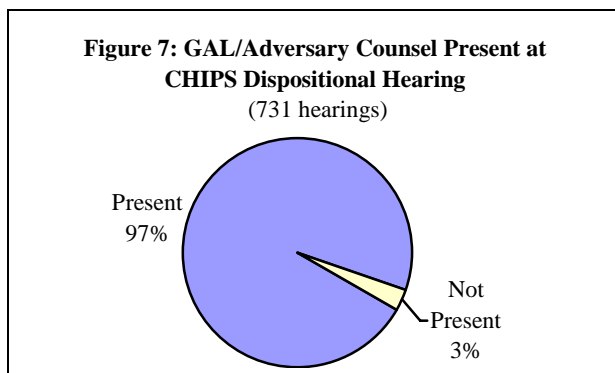
Twelve counties had a procedure in place for monitoring the required guardian ad litem training under Supreme Court Rule 35.01.<sup>21</sup>

## c. Attendance of Child's Guardian ad Litem or Adversary Counsel at the First Hearing<sup>22</sup>

In 22 of the 30 counties reviewed, the appointment of the guardian ad litem (GAL) typically occurred before the temporary physical custody (TPC) hearing to ensure that the child's best interest was represented at the initial hearing.



## d. Attendance of Child's Guardian ad Litem or Adversary Counsel at Key Hearings



<sup>21</sup> See Appendix D: Wisconsin Supreme Court Rule, Chapter 35.

<sup>22</sup> In Figure 5, TPC stands for temporary physical custody. In some counties, the temporary physical custody hearing is known as detention hearing, custody hearing, or emergency custody hearing.

## **e. Other Findings**

Concerns were raised regarding guardian ad litem performance during the focus groups in the majority of counties reviewed. While the performance of some guardians ad litem was described as exceptional, focus group participants questioned whether all guardians ad litem visit the child prior to court hearings.<sup>23</sup> A common perception was that guardians ad litem are not talking directly to parents, foster parents or other individuals involved in the case to obtain an independent opinion about what is in the child's best interest, but are basing their recommendation solely on conversations with the caseworker or the caseworker's written report. In addition, it was frequently mentioned that if the guardian ad litem did meet with the child, it was often at the courthouse right before the hearing.

Although it does not negate the concerns described above, certain focus group participants demonstrated a lack of understanding about the role and responsibilities of the guardian ad litem.

A request was made in a few counties for the court to standardize or clarify the role of the guardian ad litem post-disposition in CHIPS cases, including: whether the appointment automatically continues after disposition and which activities the guardian ad litem is permitted to participate in versus expected to participate in.

Comments were made regarding the low rate of pay for attorneys appointed by the court to serve as guardian ad litem. Focus group participants indicated that the rate of pay should be increased, and if it is not, they were concerned that it will be difficult to find attorneys, especially well-qualified and experienced attorneys, to take these appointments.

In some of the counties, the county did not routinely appoint adversary counsel for children 12 years of age or older in CHIPS cases as required by statute.<sup>24</sup>

In those counties where attorneys were not regularly appointed for parents in CHIPS cases, focus group participants were concerned that unrepresented parents do not have a sufficient understanding of the CHIPS proceeding. Furthermore, focus group participants believed that appointing attorneys for parents on a more frequent basis would not only contribute to the parent's understanding of and participation in the process, but also to the efficiency and quality of court hearings.

## **f. Best Practice Examples**

- Establishing a policy requiring all guardians ad litem to meet or contact the child prior to any court hearing unless excused by the court. [Waukesha County]
- Developing a form to evaluate guardian ad litem performance. [Brown County]
- Having the guardian ad litem's appointment continue automatically post-disposition. [Washburn, Burnett, Shawano, Trempealeau, Brown, Manitowoc, Jackson, Rusk, Green, Sheboygan, St. Croix, Milwaukee, Barron, Iowa, Washington, Waupaca, Racine, Marquette, and Crawford Counties]

---

<sup>23</sup> See Wis. Stats. §48.235(3)(b).

<sup>24</sup> See Wis. Stats. §§48.23(1m)(b)2., 48.23(3m), and 48.235(1)(e).

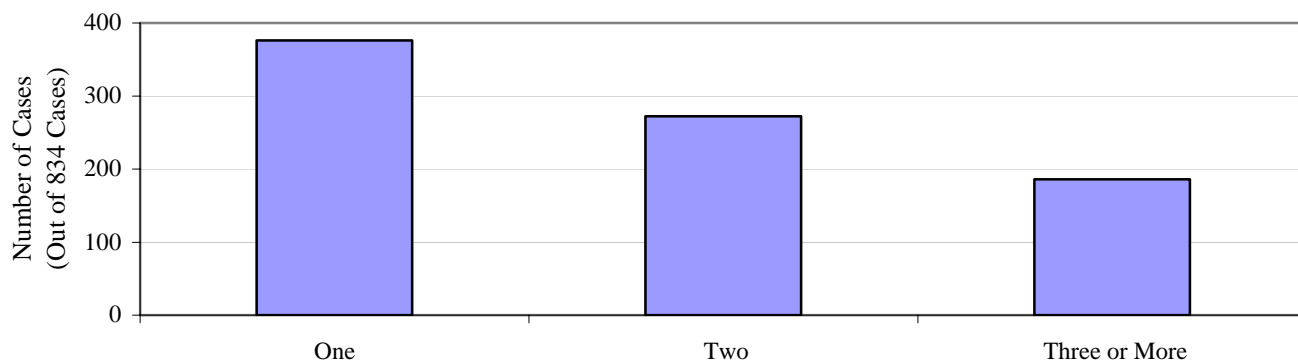
- Regularly appointing attorneys for parents in CHIPS cases. It was reported during the reviews that appointing attorneys for parents is a positive practice that contributes to timely case processing and ultimately saves the county money. [Waupaca, Green, Rock, Washington, Waukesha, Milwaukee, La Crosse, Trempealeau, Jackson, Brown, and Dane Counties]
- Having attorneys on-call and immediately available for appointment to qualified parents at temporary physical custody hearings in CHIPS cases. [Milwaukee County]
- Matching the circumstances of the case with the most appropriate attorney when making appointments. For example, appointing an attorney from the city where the parent lives to facilitate communication between the attorney and parent. [Rock County]

## 5. NUMBER OF JUDICIAL OFFICERS

It is important to have the number of judicial officers presiding over a case kept at a minimum to promote consistency and continuity as well as minimize duplication. This is particularly true for CHIPS and TPR cases given the complex nature of these types of cases, the fact that it is a highly specialized area of the law that changes frequently, and the length of time some of these cases are involved in the court system.<sup>25</sup>

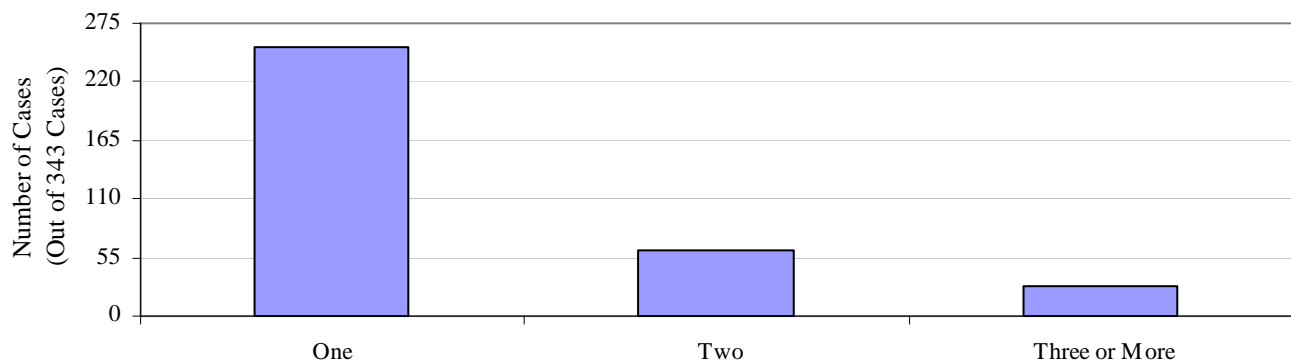
Fourteen one-judge counties were reviewed. In the remaining 16 counties, eight counties had judges designated to hear juvenile cases. Ten counties had a circuit court commissioner who regularly heard CHIPS temporary physical custody and/or plea hearings, which automatically increases the number of judicial officers hearing a child's CHIPS case.

**Figure 11: Number of Judicial Officers in CHIPS Case Sample**



<sup>25</sup> See Resource Guidelines (NCJFCJ), page 19; Building a Better Court (ABA, NCSC, NCJFCJ), page 10; and Adoption and Permanency Guidelines, page 5.

**Figure 12: Number of Judicial Officers in TPR Case Sample**



### a. Best Practice Examples

- Having a Unified Family Court in counties with more than one judge, where the same judge that has a child's CHIPS case will also hear the other cases the family is involved in, such as a paternity case or parent's criminal case. [La Crosse County]

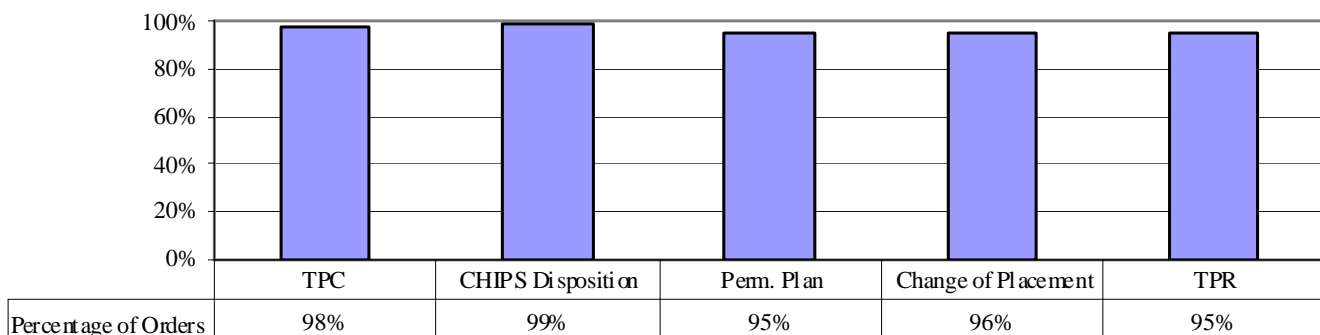
## E. TIMELINESS

As explained in the "Resource Guidelines: Improving Court Practice in Child Abuse & Neglect Cases",<sup>26</sup> making timely decisions, reducing delays, and expediting CHIPS and TPR cases contribute to achieving permanence for children more quickly.

### 1. COURT ORDERS

Almost all of the orders examined as part of the reviews were filed within 30 days.

**Figure 13: Orders Filed Within 30 Days<sup>27</sup>**

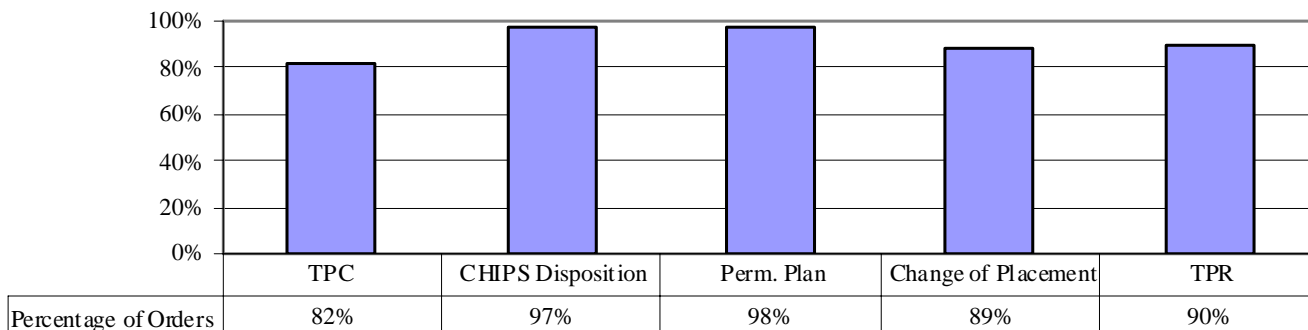


<sup>26</sup> Published by the National Council of Juvenile and Family Court Judges (NCJFCJ). See also "Building a Better Court" Guide (ABA, NCSC, NCJFCJ), page 11.

<sup>27</sup> The data for Figure 13 is as follows: 569/578 TPC orders, 718/729 CHIPS disposition orders (includes consent decrees and dispositional orders), 226/239 permanency plan hearing orders, 54/56 change of placement order, and 340/359 TPR orders.

The majority of the orders examined as part of the court file review were the appropriate and current circuit court form. The current standard circuit court form should be used since it contains the findings required by law for the associated hearing.

**Figure 14: Written Orders Using Current Standard Circuit Court Forms<sup>28</sup>**



#### **a. Best Practice Examples**

- Distributing the orders to the parties at the end of the hearing. [Buffalo, Shawano, Trempealeau, Jefferson, Pierce, Racine, Columbia, Marquette, Green, Waukesha, Dane, and Milwaukee Counties]
- Court files containing verification that the orders were mailed to the parties, such as an Affidavit of Mailing. [Pepin, Clark, Rusk, Iowa, Pierce, Racine, and La Crosse Counties]

## **2. TIMELINESS OF COURT PROCEEDINGS**

#### **a. Length of Time between Petition and Disposition<sup>29</sup>**

In accordance with the benchmarks established by the Wisconsin Committee of Chief Judges, Case Processing Time Standards Subcommittee, CHIPS cases should have a disposition within 90 days of case initiation and TPR cases should have a disposition within 120 days of case initiation.<sup>30</sup>

<sup>28</sup> The data for Figure 14 is as follows: 475/578 TPC orders, 704/729 CHIPS disposition orders (includes consent decrees and dispositional orders), 234/239 permanency plan hearing orders, 50/56 change of placement order, and 323/359 TPR orders. The data from one of the counties significantly affects the percentage for the TPC orders in Figure 14. If the data from that county is removed, the percentage would change to 99%.

<sup>29</sup> Disposition for purposes of this report is the date of the hearing with a dispositional order, consent decree, or dismissal.

<sup>30</sup> See Wisconsin Director of State Courts Office Informational Bulletin #06-13.

Figure 15 shows the average length of time between the filing of the CHIPS petition and disposition for each of the 30 counties using the data from the court file review. Most counties reached disposition within the 90-day case processing standard.

**Figure 15: Length of Time Between CHIPS Petition and Disposition  
(Court File Review)**

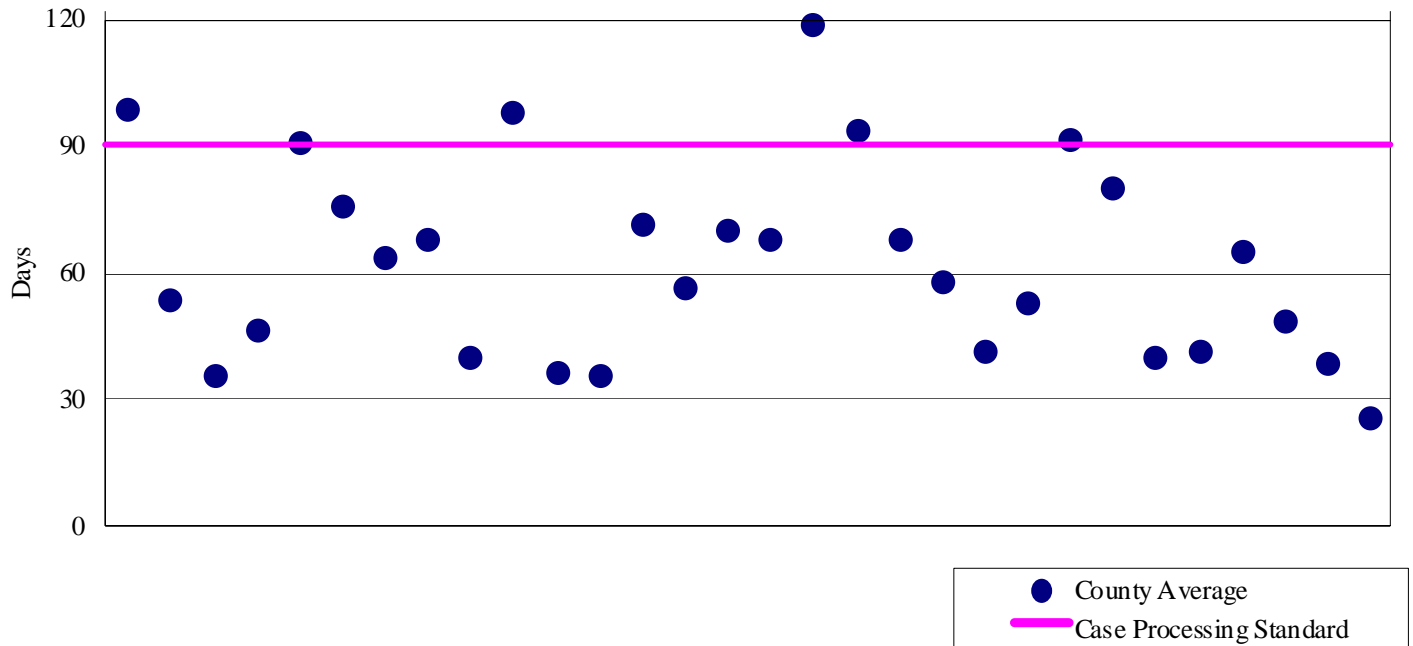
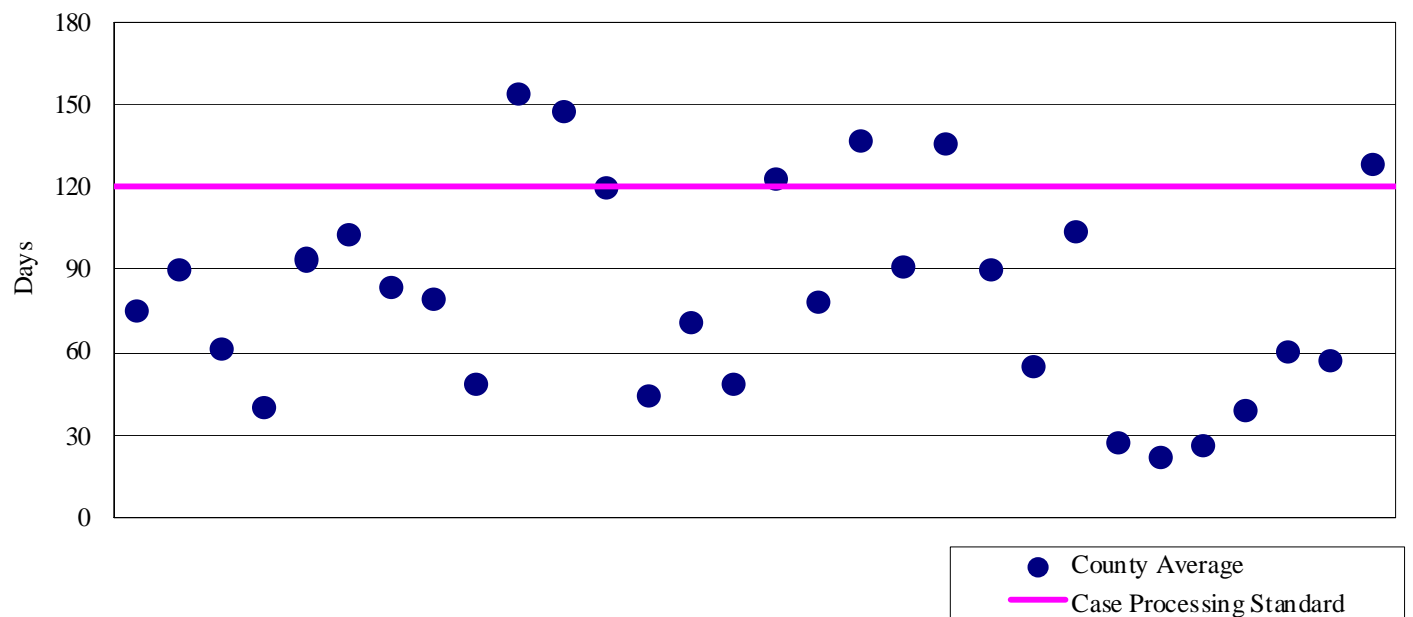


Figure 16 shows the average length of time between the filing of the TPR petition and disposition for each of the 30 counties using the data from the court file review. Most counties reached disposition within the 120-day case processing standard.

**Figure 16: Length of Time Between TPR Petition and Disposition  
(Court File Review)**



## **b. Delays and Continuances**

Overall, CHIPS and TPR cases were regarded as priority cases. In 23 counties, cases were generally heard and completed consistent with statutory requirements, without unnecessary delay or frequent continuances. The following reasons were given in the focus groups as contributing to this: judicial oversight in scheduling; judicial officers limiting continuances; early appointment of attorneys; use of mediation; and having designated judges hearing juvenile cases.

In the seven counties that exhibited some level of delay in reaching disposition, the reasons were varied and the CCI could not conclusively determine that the delay was unnecessary in many instances. The following reasons for continuances were stated in focus groups or directly observed: (1) the judicial intake system utilized by the court led to judge “shopping” and continuances; (2) coordinating attorneys’ schedules; (3) difficulty in finding time on the court’s calendar; (4) not scheduling the next hearing while in court; (5) the limited availability of the judicial assistants; (6) parties routinely waiving time limits; (7) limited availability of jury trial dates; (8) pending criminal charges; (9) attorneys not prepared for court; and (10) not always coordinating case events to alleviate multiple hearings for the same child.

## **3. COURT REPORTS**

Seventeen of the counties had a written local rule requiring the agency to file the court report within a specified period of time prior to the CHIPS dispositional hearing. The specified period of time for the local rule ranged from 48 hours to 5 days.

- The agency filed the court report within the applicable local rule in 61% of the cases.
- The median length of time the agency court report was filed prior to the CHIPS dispositional hearing was 4 days.

In a number of counties, focus group participants commented that parents and attorneys were frequently not receiving the court report in time to sufficiently review it before the hearing. This was reported even in counties where the agency regularly filed the court report within the local rule.

## **F. INDIAN CHILD WELFARE ACT**

The child was removed from the home and subject to the Indian Child Welfare Act (ICWA) in 32 of the CHIPS cases reviewed. Therefore, an “active efforts” finding was required in these cases.<sup>31</sup> In addition, ICWA requires that a qualified expert witness present testimony that continued custody of the child by the parent is likely to result in serious emotional or physical damage to the child.<sup>32</sup>

- 8 of the 32 (25%) cases contained documentation that the “active efforts” finding was made either orally or in writing.
- 12 of the 32 (38%) cases contained documentation that a qualified expert witness presented testimony.

---

<sup>31</sup> Pursuant to ICWA, “Any party seeking to effect a foster care placement of, or termination of parental rights to, an Indian child under State law shall satisfy the court that active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and that these efforts have proved unsuccessful.” 25 U.S.C. 1912(d).

<sup>32</sup> See 25 U.S.C. 1912(e).

As mentioned earlier, when a CHIPS or TPR case was identified as subject to ICWA, notice of hearings was routinely given to the tribe and documented in the court file. However, it was not always sent via certified mail with return receipt as required by ICWA.<sup>33</sup> Furthermore, in several of the counties, nothing was checked on a significant number of CHIPS petitions as to whether the child was subject to ICWA<sup>34</sup> and no box was checked on a number of the CHIPS dispositional orders regarding ICWA compliance. Therefore, it was not possible to determine whether the child was subject to ICWA, and governed by additional notice and procedural requirements.

## **G. OTHER FINDINGS**

---

### **1. CASE MANAGEMENT AND OTHER ISSUES**

The Register in Probate's Office or Clerk of Court's Office was frequently identified as a strength. Focus group participants indicated that the work being done by the Juvenile Clerks contributed to the system running smoothly. The CHIPS and TPR court files were well organized. As for the utilization of CCAP in CHIPS and TPR cases, counties routinely cross-referenced sibling cases in CCAP, but did not routinely cross-reference the CHIPS and TPR case for the same child.<sup>35</sup>

A few counties alternated case numbers between JC and JV case types instead of numbering the cases sequentially within a case type (e.g., 04JC1, 04JC2, 04JC3... and 04JV1, 04JV2, 04JV3...) as directed by the Model Record Keeping Juvenile Procedures Manual (Children's Code). Additionally, juvenile guardianship cases were occasionally opened as a JC case, instead of a JG or GN case as directed by the Model Record Keeping Juvenile Procedures Manual.

Concern regarding lack of privacy and confidential conversations taking place in the waiting area outside the courtroom was raised in a few of the counties. A factor contributing to this was the practice of scheduling multiple hearings for the same time, which frequently resulted in hearings being held later than scheduled and a large group of people waiting outside the courtroom discussing confidential matters in the presence of others.

In some counties, a new temporary physical custody order was generated at hearings that were not temporary physical custody hearings, such as plea and status hearings. While this practice is permissible, it is not necessary to generate another order for temporary physical custody if the child remains out of home at the same placement with the same conditions of custody.

Six of the counties that were reviewed had a Court Appointed Special Advocate (CASA) program.<sup>36</sup> Focus group participants reported that CASA is a beneficial program, whose volunteers provide additional monitoring of the case and detailed information to the court. However, in some of the counties, the attorneys and caseworkers were not always receiving copies of the reports that the CASA volunteers generated, and were therefore not benefiting from having the information about the child and family contained in these reports.

---

<sup>33</sup> See 25 U.S.C. 1912(a).

<sup>34</sup> Under §48.255(1)(cm), Stats., a CHIPS petition shall state whether a child is subject to the federal Indian Child Welfare Act (ICWA). The standard CHIPS petition form (JC-1610) provides the petitioner with the option of checking one of three boxes (e.g., "no", "yes" or "unascertainable") when addressing the ICWA requirement.

<sup>35</sup> Cross-referencing the CHIPS and TPR case for the same child will be a new policy included in the Model Record Keeping Juvenile Procedures Manual (Children's Code).

<sup>36</sup> At the time of the on-site review, Manitowoc, Brown, Columbia, Dane, and Milwaukee Counties had an established CASA program, and Rock County had recently started a CASA program.

In a few counties, it was reported that high caseloads, combined with insufficient staffing levels in the District Attorney's Office, had adversely affected the quality of representation by the District Attorney's Office in juvenile cases, which included: a lack of preparation, communication with other parties in the case, continuity, and knowledge of the case and law. Focus group participants felt that it is important to have attorney(s) in the District Attorney's Office designated to handle all of the juvenile cases because it is such a highly specialized area of the law. Additionally in some counties, high caseloads and insufficient staffing levels in the District Attorney's Office or Corporation Counsel's Office caused unnecessary delay in the filing of TPR petitions.

## **2. AGENCY RELATED ISSUES**

Overall, caseworkers were described as dedicated, knowledgeable about their cases, and prepared for court. However, caseworker turnover and lack of training for new caseworkers in some counties were noted as having a negative affect on agency performance.

Information from the focus groups suggests that agency staff and attorneys might not always have a complete understanding of each others' responsibilities. Specifically, it was reported that agency staff sometimes lacked an understanding of the role of the guardian ad litem, adversary counsel, and adversarial process, while attorneys and the court sometimes lacked an understanding of all of the safety standards utilized by the agency and the services available for children and families.

The need for the agency to make more of an effort to identify, locate, and involve fathers was raised in several counties.

The relationship between the agency and foster parents was raised as an area of concern in a number of counties. Some of the statements made during the focus groups include: there is lack of follow-through and responsiveness by the agency; it is frequently difficult for foster parents to contact the caseworker; foster parents are not always given enough information about the child and family; there is a lack of respite support for foster parents; and foster parents would like more training after they have been licensed.

The following services were most frequently reported as lacking or difficult to access for children and families in the counties that were reviewed: transportation for families to services and visitation; number of foster homes; availability of supervised visitation; preventative services; bilingual service providers; and medical and dental professionals accepting public insurance.

### **a. Best Practice Examples**

- The court and agency meeting regularly to discuss policy and administrative issues individually, in a large group, or at the agency's unit meetings. [Burnett, Washburn, Waupaca, Milwaukee, Crawford, and St. Croix Counties]